

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of March, two thousand thirteen.

PRESENT: DENNIS JACOBS,
 Chief Judge,
ROSEMARY S. POOLER,
 Circuit Judge.
ERIC N. VITALIANO,
 District Judge.*

UNIVERSITAS EDUCATION, LLC,
Plaintiff-Appellee,

-v.-

12-3504

NOVA GROUP, INC., AS TRUSTEE, SPONSOR
AND NAMED FIDUCIARY OF THE CHARTER OAK
TRUST WELFARE BENEFIT PLAN,
Defendant-Appellant.

* The Honorable Eric N. Vitaliano, District Judge of the United States District Court for the Eastern District of New York, sitting by designation.

1 **FOR APPELLANT:** JACK E. ROBINSON, Robinson Law
2 Offices, Stamford, Connecticut.

3
4 **FOR APPELLEE:** PAULA K. COLBATH, Loeb & Loeb
5 LLP (Michael Barnett, Loeb &
6 Loeb LLP, on the brief), New
7 York, New York.

8
9 Appeal from a judgment of the United States District
10 Court for the Southern District of New York (Swain, J.).
11

12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
13 **AND DECREED** that the judgment of the district court be
14 **AFFIRMED.** The mandate shall issue immediately. Nova Group
15 shall bear the costs of appeal.
16

17 Nova Group, Inc. ("Nova Group") appeals from the
18 judgment of the United States District Court for the
19 Southern District of New York (Swain, J.), confirming an
20 arbitration award in favor of Universitas Education, LLC
21 ("Universitas") in the amount of \$26,525,535.88, plus
22 prejudgment interest and attorneys' fees. We assume the
23 parties' familiarity with the underlying facts, the
24 procedural history, and the issues presented for review.
25

26 The sole issue raised on appeal is whether the
27 district court had subject matter jurisdiction over this
28 action. We review this question de novo. See Oscar Gruss &
29 Son, Inc. v. Hollander, 337 F.3d 186, 193 (2d Cir. 2003).
30

31 The underlying dispute involves a trustee's refusal to
32 pay approximately \$30 million in life insurance proceeds to
33 the trust beneficiary following the insured's death in June
34 2008. When Nova Group (the trustee) rejected a claim by
35 Universitas (the beneficiary) to the death benefit,
36 Universitas filed a demand for arbitration, pursuant to a
37 contract-based arbitration clause. On January 24, 2011, the
38 arbitrator held Nova liable to Universitas for
39 \$26,525,535.88. Nova then filed a Petition to Vacate in
40 Connecticut Superior Court pursuant to the Federal
41 Arbitration Act ("FAA"), 9 U.S.C. § 10, and Universitas
42 filed an action in New York Supreme Court seeking
43 confirmation of the award pursuant to 9 U.S.C. § 9. Both
44 parties removed the respective actions to federal court,
45 asserting the existence of diversity of citizenship and a
46 federal question.
47

1 After losing on the merits, Nova Group then challenged
2 the district court's subject matter jurisdiction over the
3 case. The court court summarily dismissed this argument as
4 "wholly without merit" and entered judgment for Universitas.
5 A 249. We agree with this decision.
6

7 "[S]ubject matter jurisdiction is an unwaivable sine
8 qua non for the exercise of federal judicial power." Curley
9 v. Brignoli, Curley & Roberts Assocs., 915 F.2d 81, 83 (2d
10 Cir. 1990). So Nova Group's motion is late in the day, but
11 not untimely.
12

13 Subject matter jurisdiction clearly exists here.
14 Federal courts have diversity jurisdiction over
15 controversies between "citizens of different States." 28
16 U.S.C. § 1332(a)(1); U.S. Const. art. III, § 2. "Diversity
17 jurisdiction exists over 'civil actions where the matter in
18 controversy exceeds the sum or value of \$75,000, exclusive
19 of interest and costs, and is between . . . citizens of
20 different States.'" Hallingby v. Hallingby, 574 F.3d 51, 56
21 (2d Cir. 2009) (quoting 28 U.S.C. § 1332(a)(1)).
22

23 Universitas is a citizen of New York because it is a
24 limited liability company whose members are domiciled in New
25 York. Nova Group is a Delaware corporation with its
26 principal place of business and headquarters in Simsbury,
27 Connecticut, making it a citizen of both Delaware and
28 Connecticut. The amount in controversy indisputably exceeds
29 \$75,000. Nova Group argues that a court must also consider
30 the citizenship of trust beneficiaries for purposes of
31 subject matter jurisdiction if suit is brought by a trustee
32 (which, in this case, would undermine the parties' diversity
33 of citizenship). This argument was rejected in Navarro
34 Savings Association v. Lee, 446 U.S. 458 (1980). See id. at
35 465-66 (affirming the rule, "more than 150 years" old, that
36 permits trustees "to sue in their own right, without regard
37 to the citizenship of the trust beneficiaries"). Contrary
38 to Nova Group's contentions, Carden v. Arkoma Associates,
39 494 U.S. 185 (1990), which concerned the citizenship of a
40 limited partnership, did not overrule Navarro. Rather, the
41 Supreme Court explicitly held that the two opinions did not
42 conflict. See id. at 191-94. Navarro therefore remains

1 good law, and the district court properly held that it had
2 jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).¹
3

4 For the foregoing reasons, and finding no merit in Nova
5 Group's other arguments, we hereby **AFFIRM** the judgment of
6 the district court. The mandate shall issue immediately.
7 Nova Group shall bear the costs of appeal.
8

9 FOR THE COURT:
10 CATHERINE O'HAGAN WOLFE, CLERK
11

¹ Because we hold that the district court had jurisdiction under 28 U.S.C. § 1332(a)(1), we need not determine whether the case also presented a federal question and thus created an independent basis for jurisdiction under 28 U.S.C. § 1331.